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An Israeli Tied To Contra Aid Can Go Home

Grand Jury Testimony Is Put Off for Now

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WASHINGTON, May 22 — A former senior Israeli diplomat who negotiated the sale of American weapons to Iran is leaving the United States without testifying before a grand jury but has agreed to return if ordered by a Federal court, Israeli and American officials said today.

After strenuous protests from the Israeli Government, the former diplomat, David Kimche, who served as Director General of the Israeli Foreign Ministry, was excused from appearing today before the grand jury in the Iran-contra investigation.

In a closed hearing in Federal District Court here, Israeli officials argued that Mr. Kimche, a key figure in the Iran-contra affair, was protected by diplomatic immunity and should not be forced to obey a grand jury subpoena issued this week by the special prosecutor in the Iran-contra affair, Lawrence E. Walsh.

Decision Is Delayed

Judge Aubrey E. Robinson Jr. delayed a decision on the Israeli motion but agreed to allow Mr. Kimche to leave for Israel. In return, officials said, the Israeli Government and Mr. Kimche promised that he would return if courts upheld the subpoena.

A diplomatic official said the Israeli Government had warned prosecutors earlier this week that it would provide no further cooperation in the criminal investigation unless the subpoena was temporarily lifted.

The Israeli Government said it had ordered Mr. Kimche not to testify before the grand jury, fearing he might be forced to divulge information affecting Israel's national security.

Protest by Shamir

The Associated Press reported today from Israel that Prime Minister Yitzhak Shamir had described the subpoena as illegal and a "clear violation" of agreements between Israel and the United States.

He declared that the former official "would not be permitted to be interrogated by such a body."

Mr. Walsh issued the subpoena this week for Mr. Kimche, who was on a private visit to New York, and ordered him to appear today in Washington.

Mr. Kimche, who left the Israeli Government last year, was instrumental in opening negotiations that led to the sale of American weapons to Iran.

According to law-enforcement officials, Mr. Kimche would be expected to face questions from the grand jury about the actions of Reagan Administration officials and others involved in the Iran-contra affair. It remained unclear, however, whether he could be forced to answer those questions.

After a 90-minute court hearing today, Mr. Kimche, with Ambassador Melvyn Rosenne at his side, said he would leave shortly for Israel.

A Surprise to Kimche

"As you can see, I am leaving," he told reporters. "I can leave the United States when I wish to and come back in when I wish, and as far as I am concerned that is very satisfactory."

Israeli officials said that the subpoena had surprised Mr. Kimche and that he would not have come to the United States if he had thought he would be ordered to testify before Mr. Walsh.

The subpoena, one official said, was served on Mr. Kimche on Wednesday morning during a business visit to New York.

Legal scholars said they doubted that Mr. Kimche could invoke diplomatic immunity and refuse to appear before the grand jury if he remained in the United States.

State Dept. Position

But they said Mr. Kimche could probably not be compelled to discuss sensitive matters he oversaw while serving as a senior Israeli diplomat. That seemed to be the position taken today by the State Department.

"Mr. Kimche is not a diplomat accredited to the United States, and under the circumstances, we have refused to accord him diplomatic status," said Charles E. Redman, the department spokesman. "He may, however, be immune from providing testimony with respect to certain subjects or information."

"He may be immune from providing testimony concerning special missions to the United States while he was Director General of the Israeli Foreign Ministry."

Mr. Walsh acts independently of the Reagan Administration. If he shares the State Department's views, however, the questioning of Mr. Kimche before the grand jury might be very limited.

According to American investigators, Mr. Kimche, while in his Govern-

ment post, suggested the sale of arms to Iran in 1985 and helped American officials make contact with Iranian middlemen.

The investigators said Mr. Kimche urged President Reagan to approve plans for Israel to provide TOW anti-tank missiles for Iran in exchange for the release of American hostages in Lebanon.

In December 1985, the investigators said, Mr. Kimche participated in a meeting in London with American officials and Manucher Ghorbanifar, an Iran arms dealer, to discuss the sale of weapons to Iran.

Mr. Kimche is thought to have extensive information about the actions of several key Reagan Administration officials in the case, including Lieut. Col. Oliver L. North, the former White House aide, and Robert C. McFarlane, the former national security adviser.

Protest by Israel

Israel had protested the subpoena this week as a violation of an agreement between the Israeli Government and Congressional committees investigating the Iran-contra affair.

In exchange for an agreement by the committees not to seek testimony from Israeli officials, Israel agreed to provide extensive written answers to questions posed by American lawmakers.

Law-enforcement officials say that

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Mr. Walsh does not feel bound by the agreement and that he is still pressing the Israeli Government to allow Israelis to appear before the grand jury.

"This has to do with the wider question of how governments conduct business," said Yossi Gal, a spokesman for the Israeli Embassy in Washington. "It is inconceivable that a subpoena should be issued to a former official of another government.

"Everything that was done by Mr. Kimche and anybody else involved in this was done on behalf of the Government of Israel as part of official business," he said. "We don't believe that anybody can force Israelis to disobey their law, which forbids them from divulging privileged or secret information."

Lawyers for Colonel North also had business today in the Federal courthouse in Washington. In a 77-page brief filed with the United States Court of Appeals, Colonel North resumed his challenge to the constitutionality of the special prosecutor law.

The brief was apparently filed in response to a request by Mr. Walsh for defense documents or grand-jury testimony from Colonel North.

Defense lawyers have urged the court to overturn the special prosecutor law because, they said, it infringed on the law-enforcement powers of the executive branch.

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